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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/064,477

Filing Date: July 18, 2002

Appellant(s): FANO, ANDREW E.

Christopher P. Moreno
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 03/31/08 appealing from the Office action
mailed 12/12/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,818,510	Cobbley et al.	10-1998
2003/0011684	Narayanaswami et al.	01-2003
5,822,537	Katseff et al.	10-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1- 8, 10- 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cobbley et al. (US 5818510) (Cobbley) in view of Narayanaswani et al. (US 20030011684, hereafter Narayanaswani).

Regarding claims 1 and 27, Cobbley discloses: A method and an apparatus for media indexing comprising: capturing a subject in a media file with a media capture device(112, fig. 1 and the indexing information includes: a title, a program segment the store is associated with and a set of subject matter keywords which describe key aspects of the story segment, col. 3, lines 65 to col. 4, lines 12, Cobbley); automatically receiving, by the media capture device (112, fig. 1), index information separate from the media file from an external source (105, fig. 1) related to the subject (i.e., Index data capture device receives the broadcast information from broadcast receiver 110 and obtains the indexing information form the broadcast information, col. 6, lines 12-25 , Cobbley); and

associating the index information with the media file (the indexing information includes: a title, a program segment the store is associated with and a set of subject matter keywords which describe key aspects of the story segment, col. 3, lines 65

However, Cobbley didn't disclose: an event indicator that a specific event is occurring. On the other hand, Narayamaswami discloses: an event indicator that a specific event is occurring (i.e., camera 100 also included is a GPS receiver 114, operatively connected between an RF port 116 and the CPU 102 for recording the geographic position (e.g., latitude, longitude, and altitude) of the camera 100, as well as universal time coordinated (UTC) time and date and local time and date when an image is taken.... See paragraphs 0035 and 0049, Narayamaswami). Thus, at the time invention was made, it would have been obvious to a person of ordinary skill in the art to include index information comprising an event indicator that a specific event is occurring in the system of Cobbley as taught by Narayanaswani. The motivation being to enable the system provide a method allows the recorded parameter to be watermarked into every captured image, which parameters may then be later used for verifying the authenticity of pictures, as well as for indexing and searching photo albums (see paragraph 0042, lines 24-30, Narayanaswani).

Regarding claim 2, all the limitations of this claim have been noted in the rejection of claim 1. In addition, Cobbley/Narayanaswani disclose: wherein the step of associating the index information with the media file further comprises: encoding the

index information into the media file . (i.e., index data capture device 112 converts the broadcast information to digital form prior to performing the recognition, col. 6, lines 27-32, Cobbley).

Regarding claims 3 and 15, all the limitations of these claims have been noted in the rejection of claims 1 and 13. In addition, Cobbley/Narayanaswami discloses: further comprising: providing the media file and the index information to a media file storage device (108, fig. 1) which comprises a plurality of stored media files having index information associated therewith (i.e., the recorded camera parameters associated with the image may be stored in a separate memory block associated with the generated image (e.g., in an image header).

Regarding claim 4, all the limitations of this claim have been noted in the rejection of claim 3. In addition, Cobbley/Narayanaswami discloses: wherein the media file storage device stores the media file and index information, the method further comprising at least one of the following: searching the plurality of stored media files using the index information and enabling a commercial system with the plurality of stored media files using the index information (i.e., the user of a client system 140 may also search for particular news titles, such as professional sports team name, to client system 140..., col. 10, lines 26-42, Cobbley).

Regarding claim 5 , all the limitations of this claim have been noted in the rejection of claim 1. In addition, Cobbley/Narayanaswani discloses: wherein the index information, prior to being associated with the media file, is transmitted from a media indexing beacon (i.e., broadcast source 105 may be any of a wide variety of conventional signal broadcasting devices, such as a satellite dish, a radio or television transmitter, broadcast source transmits to broadcast receiver 110, col. 3, lines 35-47, Cobbley).

Regarding claim 6, all the limitations of this claim have been noted in the rejection of claim 5. In addition, Cobbley/Narayanaswani discloses: wherein the step of receiving the index information is in response to an index information request (i.e., end user requests a particular segment stored in caches 130, such as by the title or keywords, the cache manager 125 is able to quickly retrieve the most recent version of the requested information and return it to the user, col. 8, lines 8-15, Cobbley).

Regarding claim 8, all the limitations of these claims have been noted in the rejection of claim 1. In addition, Cobbley/Narayanaswani discloses: storing index information relating to a subject (i.e., cache manager 125 stores the indexing information segment of the video and audio data stored in cache 130, col. 7, lines 39-42, Cobbley);

receiving an index information request that is generated by a media capture device (112, fig. 1 and index data capture device 112 receives the broadcast

information from broadcast receiver and obtains the indexing information from the broadcast information, col. 6, lines 12-32, Cobbley);

transmitting the index information relating to the subject separately to a media capture device (112, fig. 1 and index data capture device 112 receives the broadcast information from broadcast receiver and obtains the indexing information from the broadcast information, col. 6, lines 12-32, Cobbley).

Regarding claim 10, all the limitations of this claim have been noted in the rejection of claim 8. In addition, Cobbley/Narayanaswani discloses: wherein the media capture device receives the index information and associates the index information with a media file (the indexing information includes: a title, a program segment the store is associated with and a set of subject matter keywords which describe key aspects of the story segment, col. 3, lines 65 to col. 4, lines 12, Cobbley).

Regarding claim 11, all the limitations of this claim have been noted in the rejection of claim 8. In addition, Cobbley/Narayanaswani discloses: wherein the index information is wirelessly transmitted to the media capture device (col. 10, lines 35-48, Cobbley).

As per claim 13, all the limitations of this claim have been noted in the rejection of claims 1 and 5. It is therefore rejected as set forth above.

Regarding claims 7, 12 and 17, all the limitations of these claims have been noted in the rejection of claims 1 and 8 and 13 above, respectively. In addition, Cobbley discloses: wherein the index information comprises at least one of the following: a time indicator, a landmark indicator, an event indicator, a global positioning system indicator, commercial information, a universal resource locator, and a proximity indicator (the indexing information includes: a title, a program segment the store is associated with and a set of subject matter keywords which describe key aspects of the story segment, col. 3, lines 65 to col. 4, lines 12, Cobbley).

Regarding claim 14, all the limitations of this claim have been noted in the rejection of claim 13. In addition, Cobbley/Narayanaswami discloses: prior to providing index information from the media indexing beacon, further comprising detecting, by a media capture device, a user input to capture the media file (i.e., this teleprompter can be a computer system with the text to be read by the newscaster being input to the computer system prior to broadcasting the news report,... when this subject matter information is input into the TelePrompTer, an indication is made that this text is indexing information which should be transmitted along with the video and audio broadcast, col. 4, lines 25-37 , Cobbley); and providing, by a media capture device, an index information request to the media indexing beacon (i.e., Index data capture device receives the broadcast information from broadcast receiver 110 and obtains the indexing information form the broadcast information, col. 6, lines 12-25 , Cobbley).

As per claim 16, all the limitations of these claims have been noted in the rejection of claims 3, 4 and 15. It is therefore rejected as set forth above.

Regarding claim 18, all the limitations of this claim have been noted in the rejection of claim 17. In addition, Cobbley/Narayanaswami discloses: wherein the index information enables a media file to be utilized by at least one commercial system, wherein the at least one commercial system comprises at least one of the following: a workflow system, a procurement system, a retail sales system, and a safety inspection/auditing system (client system 140, fig. 1, Cobbley).

Regarding claim 19, Cobbley/Narayanaswami discloses: a media capture and indexing system comprising a media indexing beacon (external trigger or signal) which generates a beacon signal containing index information relating to a subject (i.e., the indexing information may be generated and input into the broadcast stream automatically by the broadcast source, col. 4, lines 25-35 , Cobbley); and

a media capture device that captures the subject in a media file and separately receives the beacon signal from the beacon and associates the index information with the media file (i.e., Index data capture device receives the broadcast information from broadcast receiver 110 and obtains the indexing information from the broadcast information, col. 6, lines 12-25 , and col. Cobbley)

Regarding claim 20, all the limitations of this claim have been noted in the rejection of claim 19. In addition, Cobbley/Narayanaswani discloses: wherein the media capture device captures a plurality of media files each having index information associated therewith(the indexing information includes: a title, a program segment the store is associated with and a set of subject matter keywords which describe key aspects of the story segment, col. 3, lines 65 to col. 4, lines 12, Cobbley), the system further comprising: a media file storage device (130, fig. 1) that receives the plurality of media files, wherein the plurality of media files may be indexed on the index information (i.e., cache manager 125 stores the indexing information segment of the video and audio data stored in cache 130, col. 7, lines 39-42, Cobbley).

As per claim 23, all the limitations of this claim have been noted in the rejection of claim 19. in addition, Cobbley/Narayanaswani discloses: a media input module which generates a media file in response to a media file generation request;

A processor (110, fig. 1) operably coupled to the media input module to receive the media file (107, 100, fig. 1 and corresponding text, Cobbley); and

An index information receiver(112, fig. 1) operably coupled to the processor, wherein the index information receiver receives the beacon signal and provides the index information to the processor (i.e., index data capture device 112 receives the broadcast information from broadcast receiver..., col. 6, lines 12-25, Cobbley), wherein the processor associated the index information with the media file (the indexing information includes: a title, a program segment the store is associated with and a set of subject matter keywords which describe key aspects of the story segment, col. 3, lines 65 to col. 4, lines 12, Cobbley).

Regarding claim 24, all the limitations of this claim have been noted in the rejection of claim 23. In addition, Cobbley/Narayanaswani discloses: wherein the index information receiver further contains a transmitter that transmits an index information request to the media indexing beacon (i.e., broadcast source 105 may be any of a wide variety of conventional signal broadcasting devices, such as a satellite dish, a radio or television transmitter, broadcast source transmits to broadcast receiver 110, col. 3, lines 35-47, Cobbley).

As per claims 25 and 29, all the limitations of these claims have been noted in the rejection of claims 1 and 8. It is therefore rejected as set forth above.

Regarding claim 32, all the limitations of this claim have been noted in the rejection of claim 27. In addition, Cobbley/Narayanaswani discloses: wherein the apparatus comprises a digital camera (i.e., capture devices, 115, 112, fig. 1) and wherein the means for receiving index information includes a wireless receiver (i.e., signal broadcasting devices, radio or television transmitter, col. 3, lines 35-40, Cobbley).

Regarding claim 21, all the limitations of this claim have been noted in the rejection of claims 11 and 19. However, Cobbley disclose: at least one index buffer comprising the index information (128, fig. 1, Cobbley); and a transmitter operably

coupled to the at least one index buffer(110, fig. 1 and corresponding text), wherein the transmitter provides the index information to the media capture device (112, fig. 1).

Regarding claim 22, all the limitations of this claim have been noted in the rejection of claim 21. In addition, Cobbley/Narayanaswani /Katseff discloses: wherein the media indexing beacon further comprises a receiver that receives an index information request from the media capture device (112, fig. 1 and index data capture device 112 receives the broadcast information from broadcast receiver and obtains the indexing information from the broadcast information, col. 6, lines 12-32, Cobbley), wherein the transmitter transmits the index information in response to the index information request (i.e., broadcast receiver 110 transfers the received broadcast information to index data capture device, col. 4, lines 50-55, Cobbley).

(10) Response to Argument

A. Examiner's Burden to Establish Prima Facie Obviousness and Motivation to Combine Reference Teachings.

In response to Appellant's argument, a prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art. Once such a case is established, it is incumbent upon appellant to go forward with objective evidence of unobviousness. *In re Fielder*, 471 F.2d 640, 176 USPQ 300 (CCPA 1973).

Examiner is entitled to give claim limitations their broadest reasonable interpretation in light of the specification. See MPEP 2111 [R-I]

During patent examination, the pending claims must be "given the broadest reasonable interpretation consistent with the specification." Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541,550-51 (CCPA 1969). The court found that applicant was advocating ... the impermissible importation of subject matter from the specification into the claim.). See also *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997) (The court held that the PTO is not required, in the course of prosecution, to interpret claims in applications in the same manner as a court would interpret claims in an infringement suit. Rather, the "PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant's specification.").

The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. *In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999).

Furthermore, the examiner recognizes that obviousness can only be established. by combining or modifying the teachings of the prior art to produce the claimed

invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to modify the system of Cobbley with the system of Narayanaswami because they are in the same field of endeavor. One of ordinary skill in the art at the time of the invention would have been motivated to do so because the watermaking the parameters within the image of Narayanaswami would allow Cobbley system recorded parameter to be watermarked into every captured image, which parameters may then be later used for verifying the authenticity of pictures, as well as for indexing and searching photo albums (see paragraph 0042, lines 24-30, Narayanaswani).

B. Narayanaswami does not teach “index information separate from the media file from an external source related to the subject and comprising an event indicator that a specific event is occurring.

In response, Examiner maintained the rejection above that both Cobbley and Narayanaswami teaching index information separate from the media file from an external source related to the subject. In Cobbley, at column 6, lines 12-25, teaching index data capture device 112 receives the broadcast information from broadcast receiver 110 and obtains the indexing information from the broadcast information. It will be appreciated that although index data capture device 112 and capture device 115 are

shown as separate units in Fig 1 and Cobbley transfers a stream of broadcast information which includes multiple video and audio information segments to a receiving device, the segments are stored in a cache and **indexing information** associated with the segments is made available to end users (see abstract), hence, Cobbley's index information is separate from the media file. In addition, Narayanaswami **recorded parameters** (index information) associated with the image may be stored in a separate memory block associated with the generate image, which parameters may then be later used for verifying the authenticity of picture, as well as for **indexing** and searching photo albums, see paragraphs 0015 and 0042, lines 24-30. Therefore, Narayanaswami discloses index information separate from media file.

In response to Appellant's that Narayanaswami has no disclosure of "an event indicator that a specific event is occurring" . Examiner disagree, Narayanaswami clearly discloses an event indicator that a specific event is occurring such as disclosing the time date and location of the captured image (see paragraph 0049), it is an example of indexing information because these parameters (time date and location) are specified to be watermarked into the camera and may then be later used for verifying the authenticity of pictures, as well as for indexing and searching photo albums (see paragraph 0042, lines 24-30, Narayanaswani).

In response to Appellant's that Narayanaswami is not using "indexing information" to be searchable and/or readable information. Examiner respectfully disagree, Narayanaswami's system used the "**watermarking**" as **indexing information** because the watermarking the parameters within the image of

Narayanaswami would allow Cobbley system recorded parameter to be watermarked into every captured image, which parameters may then be later used for verifying the authenticity of pictures, as well as for indexing and searching photo albums (see paragraph 0042, lines 24-30, Narayanaswami).

C. Response to Appellant's argument on claim 4.

Appellant argues that the system disclosed by Narayanaswami does not lend itself to a searchable system because Narayanaswami hides information in the file. Examiner disagree, Narayanaswami's system provide the captured image along with the specified recorded parameters to be into every captured image, which parameters may then be later used for verifying the authenticity of pictures, as well as for indexing and searching photo albums (see paragraph 0042, lines 24-30, Narayanaswami). Therefore, Narayanaswami's system is used for searching.

Appellant argues that no disclosure in either Cobbley or Narayanaswami of "enabling a commercial system with the plurality of stored media files using the index information". In response, Cobbley discloses: searching the plurality of stored media files using the index information such as the user of a client system 140 may also search for particular news titles, such as professional sports team name, to client system 140. The client system 140 transfers a request to cache manager 125 for titles of all story segments which match the search criteria, the cache manager 125 searches in a conventional manner through the title information in cache index 128, (col. 10, lines 26-42), thus indexing information stored in cache index 128 is used for searching Cobbley's system are commercially available with can be coupled to a conventional

computer system and tuned to a particular one or several of the VBI lines for transmitted and received video information from the VBI (see col. 5, lines 44-48). In addition, Appellant provides guidance regarding the term “commercial information” is not clearly disclosed in the claim. Therefore, the rejection of claim 4 under 35 U.S.C. 103(a) is proper for the reasons set forth above in sections A and B. It is respectfully requested that the Board sustain the rejection of claim 4 under 35 U.S.C. 103(a).

D. Response to Appellant’s argument on claim 5.

Appellant's arguments with regards to the rejection of claim 5 is similar to those presented with respect to the independent claim addressed above. In particular, Appellant argues that neither Cobbley and Narayanaswami disclose a media indexing beacon transmitting index information to a media capture device prior to the index information being associated with the media file. As discussed above, Examiner disagrees. Cobbley discloses (i.e., broadcast source 105 may be any of a wide variety of conventional signal broadcasting devices, such as a satellite dish, a radio or television transmitter, broadcast source transmits to broadcast receiver 110, col. 3, lines 35-47 and Broadcast receiver 110 receives the broadcast information transmitted by broadcast source 105 and transfers it to capture device 115 and index data capture device 112, col. 3, lines 55-57), **broadcast receiver 110 is an example of media indexing beacon transmitting indexing information to index data capture device 112**. Therefore, the rejection of claim 5 under 35 U.S.C. 103(a) is proper for the

reasons set forth above in sections A and B. It is respectfully requested that the Board sustain the rejection of claim 5 under 35 U.S.C. 103(a).

E. Response to Appellant's argument on claim 6.

Appellant's arguments with regards to the rejection of claim 6 is similar to those presented with respect to the independent claim addressed above. In particular, Appellant argues that Cobbley didn't disclose "the indexing information is in response to an index information request. As discussed above, Examiner disagree. Cobbley disclose inputting requests for story segments (indexing information), the broadcast information would be continuously received by the set-top box and the most recent information would be made available to the individual user at his or her request (col. 10, lines 22-25), thus the user can use indexing information as information request. Therefore, the rejection of claim 6 under 35 U.S.C. 103(a) is proper for the reasons set forth above in sections A and B. It is respectfully requested that the Board sustain the rejection of claim 6 under 35 U.S.C. 103(a).

F. Response to Appellant's argument on claim 7.

Appellant's arguments with regards to the rejection of claim 7 is similar to those presented with respect to claim 4 addressed above. In particular, further Appellant argues that Cobbley didn't disclose a url as part of the index information. However, in claim 7, wherein the index information comprises **at least one** of the following: a time indicator, a landmark indicator, a global positioning system indicator, commercial information, a universal resource, and proximity indicator, therefore, Cobbley has the

index information comprises one of these element is satisfying the claim ,such as Cobbley discloses all video and audio data received during that five-minute span is ports related a subject matter index can be generated and provided to the individual end users without transmitting any additional indexing information is an example of a time indicator (see col. 5, lines 66 to col. 6, lines 2) . Therefore, the rejection of claim 7 under 35 U.S.C. 103(a) is proper for the reasons set forth above in sections A, B and C. It is respectfully requested that the Board sustain the rejection of claim 7 under 35 U.S.C. 103(a).

G. Cobbley and Narayanaswami fail to establish a prima facie case with respect to independent claims 8 and 13.

Appellant's arguments with regards to the rejection of claims 8 and 13 is similar to those presented with respect to claims 1 and 5 addressed above. Therefore, the rejection of claims 8 and 13 under 35 U.S.C. 103(a) is proper for the reasons set forth above in sections A, B and D. It is respectfully requested that the Board sustain the rejection of claims 8 and 13 under 35 U.S.C. 103(a). The Examiner respectfully requests that the Board sustain the rejection of claims 8 and 13 under 35 U.S.C. 103(a) for the same reasons.

H Cobbley and Narayanaswami fail to establish a prima facie case with respect to independent claims 19, 25, 27 and 29.

Appellant's arguments with regards to the rejection of claims 19, 25, 27 and 29 are similar to those presented with respect to claims 1 and 5 addressed above.

Therefore, the rejection of claims 19, 25, 27 and 29 under 35 U.S.C. 103(a) is proper for the reasons set forth above in sections A,B and D. It is respectfully requested that the Board sustain the rejection of claims 19, 25, 27 and 29 under 35 U.S.C. 103(a). The Examiner respectfully requests that the Board sustain the rejection of claims 19, 25, 27 and 29 under 35 U.S.C. 103(a) for the same reasons.

I. Regarding claims 21 and 22.

Appellant's arguments with regards to the rejection of claims 21 and 22 are similar to those presented with respect to claims 1 and 5 addressed above. In addition, Examiner maintained the rejection above indicated index buffer comprising the index information such as cache index 128, fig. 1 stored the indexing information (see col. 8, lines 1-2), cache index is an example of index buffer, since a buffer is used to store or collected data information such as indexing information. Therefore, the rejection of claims 21 and 22 under 35 U.S.C. 103(a) is proper for the reasons set forth above in sections A, B and D. It is respectfully requested that the Board sustain the rejection of claims 21 and 22 under 35 U.S.C. 103(a). The Examiner respectfully requests that the Board sustain the rejection of claims 21 and 22 under 35 U.S.C. 103(a) for the same reasons.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

The Examiner respectfully requests that the Board sustain the rejection of claim 26 under 35 U.S.C. 103(a) for the same reasons.

Respectfully submitted,

Cindy Nguyen
/C. N./
Examiner, Art Unit 2161

Conferees:

/Pierre M. Vital/
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